THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.07.2007

\+ WP(C) No.5072-73/2005

SH KISHAN LAL & ORS ...Petitioners

- versus -

GOVT OF NCT OF DELHI & ORS ...Respondents

Advocates who appeared in this case:

For the Petitioners : Ms Aruna Mehta, Mr Sanjeev Mehta, Ms Jagriti Mishra.
For the Respondent Nos.1&3. : Mr V.K. Tandon.
For the Respondent/MCD : Mr Anoop Bagai.
For the Respondent No.4 : Mr P.N. Lekhi, Sr Advocte with Mr Anurag Dubey, Mr Meenesh Dubey.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J

1. The petitioners Shri Krishan Lal and Smt. Mithlesh have filed the present writ petition in respect of their deceased son, Puran, aged 7, against the respondents, Government of National Capital Territory of Delhi and the Municipal Corporation of Delhi (hereinafter "the Corporation"), whose negligence, they claim, caused their son's death. The impleaded respondent, Sulabh International Social Service Organization (hereinafter "Sulabh"), is a

private organization that had an agreement with the Corporation to manage and oversee the toilet complexes on the Corporation's property. The petitioners pray for compensation of Rs.5 lakhs for the death of their son.

2. On 09.01.2005, Puran was playing with several other children outside his home in Sultanpuri. He went to use the free lavatory, located between F-7 Sultanpuri Block and West Friends Enclave, which is owned by the Corporation. He never returned, leading his parents to file a missing persons report with the Sultanpuri Police Station the following day. On 12.1.2005, Puran's body was found by local residents floating in an open manhole near the lavatory. The Police Station of Sultanpuri subsequently conducted a post mortem, which indicated that Puran had ante mortem injuries, specifically, a lacerated wound on his chin. After the viscera examination, the doctor's conclusion was that the cause of death was "asphyxia as a result of drowning".

3. The petitioners contend that the five sewerage manholes in the vicinity in which Puran had gone to use the lavatory were not covered with lids and that Puran slipped and fell into the open sewerage tank, resulting in his untimely death. Thus, the petitioners submit that Puran's death occurred as a result of the dereliction of duty on the part of the Respondents. On the other hand, the impleaded respondent, Sulabh, submits that its caretaker responsible for overseeing the toilet complex situated at F-7 Sultanpuri stated on record that the septic tank was cleaned one month before and that all manholes were properly covered. Sulabh further submits that there was no allegation or

complaint by any person or authority that the cover of any manhole was found missing. In addition, Sulabh asserts that the volunteers who were at the said site on the date of the incident stated that the covers of the manholes were checked and were properly covered. Sulabh submits that it has a five tier system for the supervision of the public service complexes it oversees, and that its volunteers take extra care to ensure that the manholes are always covered and that broken or stolen lids are immediately replaced. Therefore, Sulabh contends that it was not negligent in causing Puran's death and that it met its duty of care.

4. Instead, Sulabh suggests that Puran was likely kidnapped, and that the kidnapper may have killed the boy and then thrown him into the manhole, or killed the boy by throwing him into the manhole. Sulabh submits that this version of the incident is supported by the evidence of ante mortem injuries on the deceased's body. Sulabh suggests that it is even possible that Puran may have playfully removed the lid himself and then slipped or lost his balance, thereby falling into the manhole.

The following four issues arise for consideration :

1. Whether a private body such a Sulabh is amenable to writ jurisdiction under Article 226 of the Constitution ?

2. Whether the doctrine of *res ipsa loquitur* is applicable in the present case ?

3. Whether any contributory negligence can be imputed to Puran, who was a 7 year old boy at the time of his death ?

4. In case, the petitioners are entitled to compensation, on what basis should compensation be awarded to them and whose liability would it be ?

ISSUE ONE

5. The first issue that must be addressed at the outset is whether a private body, here Sulabh, is amenable to the writ jurisdiction under Article 226 of the Constitution. In ***Rahul Mehra & Anr v Union of India & Ors. : 114 (2004) DLT 323***, a Division Bench of this Court held that "amenability" is not the correct litmus test for determining the maintainability of a writ petition under Article 226. Rather, one must examine the "function" of the organization at issue : If it carries out a public function, then exercise of writ jurisdiction is appropriate, as under:

> "If a public duty or public function is involved, any body, public or private, qua that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of article 226."

6. In ***Rahul Mehra*** (*supra*), the Board of Control For Cricket in India (BCCI), although a private organization, was found to perform several public functions apart from its wholly private functions. This court held that the BCCI was amenable to writ jurisdiction under Article 226 only in regard to its public functions, but not its private functions such as private contracts, internal rules, etc. and other matters not concerning the public.

7. In the present petition, the nature of the relationship between the Corporation and Sulabh is as follows. The Corporation entered into an agreement with Sulabh, entitled "Agreement For Handing Over of Operation

and Maintenance of Complexes to Sulabh International" (hereinafter "the Agreement"), somewhere in the year of 1989 or 1990, whereby the entire management of the Corporations' toilet complexes, including the said complex in F-7 Sultanpuri, was handed over to Sulabh for thirty years, as under :

> "That the second party [i.e., Sulabh] shall operate and maintain the complexes on pay & use basis and shall clean regularly the toilets, bathrooms & urinals of the complexes and ensure continuous serviceability.
>
> xxxx xxxx xxxxx
>
> That the title of interest, ownership and rights with regard to toilet complexes shall rest with the first party [i.e., the Corporation] except that these will be operated and maintained by the second party as agreed to in this agreement.
>
> xxxx xxxx xxxx
>
> That any neglect of lapse on the part of the second party to clean & maintain the said toilet complexes shall entitle the first party to terminate the agreement after giving reasonable opportunity to the second party.
>
> xxxx xxxx xxxx
>
> That the M.C.D. officers will be allowed to inspect the complexes at any time to check the sanitation and other defects in the complexes."

8. As a subcontractor of the Corporation, Sulabh is solely responsible for maintaining the public lavatory complexes owned by the Corporation. This is obviously a public function. Therefore, as to this particular public function which Sulabh is performing, it is amenable to the writ jurisdiction under Article 226.

ISSUE TWO

9. The petitioners request the court to apply the doctrine of *res ipsa loquitur* in the present petition. However, learned counsel for the respondents submit that *res ipsa loquitur* does not apply in the present case as the facts are not such that they point to only one explanation of Puran's death, namely that his death was caused by the respondents' negligence. On behalf of Sulabh, it was submitted that where the death of the petitioners' son might have been caused by kidnappers, the petitioners can have no claim for compensation against Sulabh because a presumption of negligence cannot be raised simply because Puran's body was found on the said premises.

10. *Res ipsa loquitur* is a Latin phrase which is defined in ***Black's Law Dictionary*** in the following words : "The thing speaks for itself." The doctrine of *res ipsa loquitur* is described in detail in a decision of this Court in ***Klaus Mittelbachert v East India Hotels Ltd : 65 (1997) DLT 428,*** which reads as under:-

> "Under the doctrine of *res ipsa loquitur* a plaintiff establishes a prima facie case of negligence where (1) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident, and (2) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety. There must be reasonable evidence of negligence. However, where the thing which causes the accident is shown to be under the management of the defendant or his employees, and the accident is such as in the ordinary course

> of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care. Three conditions must be satisfied to attract applicability of res ipsa loquitur : (i) the accident must be of a kind which does not ordinarily occur in the absence of someone's negligence; (ii) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (iii) it must not have been due to any voluntary action or contribution on the part of the plaintiff. (See ***Ratanlal & Dhirajlal on Law of Torts*** , edited by Justice G.P. Singh, 22nd edition 1992, pp 499-501 and the ***Law of Negligence*** by Dr Chakraborti, 1996 edition, pp 191-192.)"

11. Let us now apply the above conditions to the present petition. First, is the accident of a kind which does not ordinarily occur in the absence of someone's negligence? If a 7 year old boy is found dead in an open manhole, in the absence of a crime, the obvious and ordinary reaction is that he fell through the open manhole. From this, the ordinary conclusion is that the manhole was left open negligently or that the negligence extended to the extent that the child was permitted, again through negligence, to remove the manhole cover and in the process or thereafter to fall through the manhole into the sewerage tank. Thus, it has to be concluded that the accident was of a kind which does not ordinarily occur in the absence of someone's negligence.

12. Second, was the accident caused by an agent or instrumentality within the exclusive control of the respondents? As discussed above, the Agreement stipulated that Sulabh was to have exclusive control over the maintenance and operation of the toilet complexes owned by the Corporation, which includes the manholes at issue.

13. Third, was the accident caused in part by any voluntary action or contribution by the deceased? This question is dealt with in some detail under issue three. At this juncture, it is sufficient to point that the deceased Puran cannot be attributed with any contributory negligence nor is there any material which points in that direction. Therefore, it would be reasonable to conclude that Puran's death was caused by the negligence of the respondents in failing to ensure that the manhole lids were covered.

14. Once the petitioners have established a reasonable case under the maxim of *res ipsa loquitur*, the burden shifts to the respondents to rebut the evidence of negligence. In ***Municipal Corporation of Delhi v Subhagwanti & Ors : AIR 1966 SC 1750,*** the Supreme Court described the shifting of the burden, relying on ***Halsbury's Laws of English, 2nd Ed., Vol. 23,*** as under:-

> "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence `tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim res ipsa loquitur applies. Where the doctrine applies, a presumption of fault is raised against the defendant, which if he is to succeed in his defence, must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part."

15. In the present petition, learned counsel for the respondents have failed to demonstrate how Puran's death could have reasonably happened

without negligence on their part. The opinion of the doctor was that the cause of death was "Asphyxia" as a result of drowning," which supports the petitioners' contention that Puran fell into an open manhole. The respondents' counter submission that he might have been kidnapped and that the kidnapper killed him by throwing him into the manhole is purely in the realm of conjecture. In any event, such a suggestion is clearly illogical - why would anyone kidnap a child simply to throw him into a manhole? Generally speaking, kidnappers take their victims away from the vicinity in which they are found, and either hold them for ransom or sexually or physically abuse them prior to killing them. The post mortem report indicates no evidence on the body of the deceased of this nature. The injury on Puran's chin is quite consistent with the probability that it resulted from the fall into the manhole itself rather than from an improbable attack by a motiveless kidnapper. Sulabh's claim that the petitioner No.1 suspected that his son had been kidnapped is of no consequence as at time the petitioner No.1 only knew that his son had disappeared. Once the body of Puran was found, all speculation was put to rest.

16. Furthermore, Puran's body was discovered by local residents in an open manhole in the vicinity of the lavatory he had visited. If the manholes were covered on the day of the accident, why was Puran found in an open manhole? The respondents have provided no explanation as to why the manhole, assuming it was covered on the day of Puran's death, was found

uncovered three days later. Accordingly, the respondents have failed to meet their burden of proof is showing how Puran's death could have reasonably occurred sans their negligence.

17. It is worth nothing that the facts in the present petition are similar to those in ***Darshan & Others (Smt) v Union of India & Ors.: 79(1999) DLT 432.*** There, too the family of the deceased brought an action against the Delhi Government after the deceased fell into an open manhole and perished. As in the present petition, the respondents there submitted that the manholes were fully covered and that there was no chance of such an accident. On the other hand, the petitioners produced a copy of the post mortem report stating the cause of death as by drowning, just as in the case of Puran. Although no injuries were found on the body in that case, whereas Puran was shown to have ante mortem injuries, muddy water was found in the liver of the deceased. Similarly, swelling and other conditions resulting from drowning were found in Puran's internal organs. The Supreme Court found the respondents liable for the deceased's death due to negligence based on the theory of *res ipsa loquitur.*

18. The Delhi High Court has made clear in ***Sushila Devi & Ors v Municipal Corporation of Delhi : ILR 1985 Delhi 746,*** that the purpose of utilizing *res ipsa loquitur* is to enable justice where the cause of the accident is unknown. In ***Sushila Devi*** (*supra*), the petitioner filed the writ petition on behalf of her deceased husband, who was killed when a branch from a decaying tree fell on him while he was driving on his motorcycle. The court found that

the Corporation was responsible for ensuring that trees abutting the roads are maintained in safe conditions, and that by failing to do so, the Corporation was negligent. The court applied the maxim of *res ipsa loquitur*, as under:

> "[W]e think that it was the duty of the Corporation to give an adequate explanation of the cause of the accident. This they have failed to do. The maxim is no more than a rule of evidence. It is based on common sense and its purpose is to enable justice to be done when the facts bearing on causation and on the care exercised by the defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant."

19. In the present petition, it is difficult to determine the exact sequence of events that led to little Puran's death, as well as the extent of care the respondents had exercised in ensuring that the manholes were properly covered. This rationale, as per ***Sushila Devi*** *(supra)*, is adequate in and of itself to allow this court to infer that the respondents were negligence.

ISSUE THREE

20 This issue concerns the question of imputing contributory negligence on the part of Puran by the respondents and, in particular, Sulabh suggesting that Puran may have playfully removed the lid himself and then slipped or lost his balance, thereby falling into the manhole. In order to establish the defence of contributory negligence, the defendant must prove, first, that the plaintiff failed to take "ordinary care for himself," or in other words, such care as a reasonable man would take for his own safety, and secondly, that his failure to take care was a contributory cause of the accident"

(see : ***Lewis v Denye : [1939] 1 KB 540 at 554***). The difficulty in the present case arises because the degree of care that is required of a reasonable "man" is entirely different to the degree of care that can be expected from a minor who is only 7 years of age. The question of contributory negligence of children is entirely different to contributory negligence on the part of the adults. In ***Lynch v Nurdin (1841) 1 Q.B. 29***, Lord Denman C.J. observed :-

> "Ordinarily care must mean that degree of care which may reasonably be expected from a person in the plaintiff's situation; and this would evidently be very small indeed in so young a child."

21. As pointed out in Charlesworth & Percy on Negligence, Eleventh Edition, this statement has traditionally been regarded as a classic statement of the law relating to the contributory negligence of children. In the said case of ***Lynch v Nurdin*** the defendant had negligently left his horse and cart unattended in the street. The plaintiff who was a 7 year old climbed on to the back of the cart to play. Another child led the horse on and the plaintiff was thrown down. The plaintiff suffered injuries. The contention of the defendant that the plaintiff was guilty of contributory negligence and that he could have prevented the accident by the exercise of ordinary care was rejected by the court in the words mentioned above. There are many instances of cases under the English law where the defence of contributory negligence has been negated in so far as small children are concerned. In India also courts have recognised that generally speaking children cannot be imputed with contributory

negligence. For instance, in ***Sundara Shetty v K Sanjiva Rao : AIR 1982 Karnataka 84,*** a Division Bench of Katnataka High Court held that :

> "28. The facts of the present case demanded greater care on the part of the driver of the car because children of tender years cannot even be imputed with contributory negligence. They have not attained that age of discretion and what generally the adults can understand as rash or negligent acts cannot even be imputed to them as they are not in a position to understand the consequences of their acts. Many dangers which are open and obvious to the adults may be concealed and secret traps for the children."

22. Similarly in ***Pandian Roadways Corporation, Madurai v Karunanithi and Another : AIR 1982 Madras 104,*** the Madras High Court, negativing the defence of contributory negligence, held that a boy of 6 could not be guilty of any negligence as he has not attained the age of discretion to realise the consequences of his acts.

23. Although as a rule contributory negligence cannot be negated whenever children are involved, it has definitely to be tempered with the condition that the degree of care to be expected from a child is entirely different to the degree of care that could be expected of a reasonable adult. So, there is some element of proportionality based on the age of the victim in arriving at the expected degree of care.

24. Considering the present case from this stand point, I am unable to agree with the defence raised by the learned counsel for Sulabh of contributory negligence by stating that Puran may have playfully removed the lid himself and then slipped or lost his balance, thereby falling into the manhole. While an

adult can be expected to have exercised due care and caution by not risking his life in removing the lid "playfully" and losing control, the same degree of care and caution cannot be expected from a child who is merely 7 years old.

25. This discussion on contributory negligence is also based on the conjecture on the part of the respondents that Puran may have playfully removed the lid himself. There is nothing on record to suggest that Puran did any such thing. There is, therefore, factually as well as legally no question of raising the defence of contributory negligence.

ISSUE FOUR

26. The next issue is on what basis should compensation be awarded to Puran's parents? At the outset, it should be clear that compensation is available where there is a tortious dereliction of public duty on the part of the State involving the infringment of a fundamental right under Article 21 of the Constitution. See, e.g. , ***All India lawyers Union v Union of India & Others : 91 (2001) DLT 469***; ***Darshan*** (*supra*); ***M.S. Grewal v Deep Chand Sood & Ors : 2001 ACJ 1719***.

27. In ***Smt. Kamla Devi v Government of NCT of Delhi & Anr : 114 (2004) DLT 57,*** I had occasion to address the issue of how compensation should be awarded. I found that there are two types of compensation :-

> "(a) `standard compensation' or the so-called `conventional amount' (or sum) for non -pecuniary losses such as

loss of consortium, loss of parent, pain and suffering and loss of amenities; and

(b) Compensation for pecuniary loss of dependency."

28. The "standard compensation" must be revised from time to time to counter inflation. In ***Kamla Devi*** (supra), I found this conventional sum for non-pecuniary loss to be Rs.97,700 for 1996, the year in which the key events of that case occurred. It was also held that compensation for pecuniary loss of dependency should be calculated as under:-

> "Compensation for pecuniary loss of dependency is to be computed on the basis of loss of earnings for which the multiplier method is to be employed. The table given in Schedule II of the MV Act, 1988 cannot be relied upon, however, the appropriate multiplier can be taken there from. The multiplicand is the yearly income of the deceased less the amount he would have spent upon himself. This is calculated by dividing the family into units – 2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member. This becomes the multiplicand and is multiplied by the appropriate multiplier to arrive at the figure for compensation of pecuniary loss of dependency."

29. Of course, simple interest should accrue on the basis of the current inflation rate, as provided by the Government of India, for the period commencing from the date of death of the deceased until the date of payment by the State. Although, ***Kamla Devi*** (*supra*) involves awarding compensation

to a crime victim's family, whereas the present petition deals only with the tort of negligence, the above-stated multiplier method is very well-established and has been applied to many civil cases [See for example, ***M.S. Grewal*** (*supra*)].

30. In order to calculate the standard compensation which the petitioners are entitled to receive, the starting point of Rs.97,000 in 1996 (or Rs.50,000/- in 1989) should be used, as per ***Kamla Devi*** (*supra*). This amount must be adjusted for January, 2005, which is when Puran's death occurred, based on the Consumer Price Index for Industrial Workers (CPI-IW), published by the Labour Bureau, Government of India. With the base year 1982 (=100), the average CPI (IW) for the year 1989 was 171 and for January, 2005 was 526. Hence, the inflation-corrected value of Rs.50,000/- in 1989 works out to Rs.1,53,801.16 (or Rs.1,53,801/-) in January, 2005.[1] So, in this case the standard compensation would be Rs.1,53,801/-.

31. Calculating the compensation for pecuniary loss of dependency is somewhat more complicated. Whereas ***Kamla Devi*** (*supra*) involved an earning adult whose death had an immediate financial impact on his family, the present petition involves the death of a small child who was not contributing to the household income and who would have been unable to do so for many more years. A somewhat different approach would be needed.

32. In ***Smt Kumari v State of Tamil Nadu & Others : 1992 ACJ 283***, the six-year old son of the appellant died as a result of falling in an open

1 50,000 x 526 / 171

manhole. The appellant filed a petition under Article 226 of the Constitution seeking a writ of mandamus directing the respondents to pay Rs.50,000/- as compensation. The Madras High Court dismissed the writ petition on the ground that in a writ petition it was not possible to determine which respondent was negligent in leaving the sewerage tank uncovered. The Supreme Court set aside the judgment of the High Court and awarded the appellant the sum of Rs.50,000 with interest at 12% per annum from the date of the accident until the date of payment. The Supreme Court further held that the State of Tamil Nadu may take appropriate proceedings to claim the said amount from any of the respondents who might have been responsible for leaving the manhole uncovered. Thus, one method of calculating the compensation of pecuniary loss of dependency is to bring the above compensation given in ***Kumari*** (*supra*) up to date based on India's inflation rate between 1992, when the case was decided, and 2005, when Puran died, and to subtract from it what the standard compensation would have been in 1992.

33. However, the approach in ***M.S. Grewal*** (supra) appears to be the better and more rational approach. In ***M.S. Grewal*** (*supra*) fourteen children drowned in a river during a school picnic as a result of the school's negligence. The Supreme Court awarded Rs.5 lakhs to each family, partly on the basis that the school was one of the most affluent in the country and the deceased children's earning potential was significant. Therefore, the method of calculating the compensation for pecuniary loss of dependency entails the

examination of Puran's potential earning capacity had he lived to adulthood . The petitioner No.1, Puran's father, was working in a market as a Security Guard and was earning approximately Rs 4,000/- per month. The late Puran, who was in the 3rd Standard, when he passed away, was an excellent student. In the previous academic year, he was ranked First in his class. Therefore, we can safely assume that Puran as an adult would have earned at least as much as his father, if not more. So, as evidenced by his academic skills, Puran's father's salary can be used as a starting base for calculating the compensation for pecuniary loss of dependency. The multiplicand would be the expected annual income less what he required for himself. Since, this expected income would only arise when Puran grew up to be an adult, it would be safe to assume that his personal expenditure would be higher. True, he would be contributing to the household, but his contribution in my view would definitely not exceed half of his income. It must be remembered that here we are concerned with compensation for pecuniary loss of dependency of Puran's parents. For some stretch of time Puran's father would be earning and his dependency would not be much. Furthermore, Puran would have married and would have had to support his wife and children. So, the assumption that, in the maximum, Puran's parents would have lost only half of Puran's expected annual income, would not be an unreasonable one. Thus, the multiplicand would work out to Rs.24,000/- (4000 x 12 x ½). The multiplicand and is to be multiplied by the multiplier of 15 as derived from the Second Schedule to the Motor Vehicles

Act, 1988 in respect of victim in the age group of upto 15 years. Therefore, Puran's parents would be entitled to a sum of Rs.3,60,000/- (24000x15) for compensation for pecuniary loss of dependency.

34. Accordingly, the petitioners are entitled to a total compensation of Rs.5,13,801/-. The standard compensation or conventional sum being Rs.1,53,801/- and the compensation for pecuniary loss of dependency being an amount of Rs.3,60,000/- as computed above.

35. The only remaining question is which of the respondents is responsible for paying the above compensation to petitioners in the first instance? Whereas in ***Kumari*** (*supra*), there was a dispute as to which of the respondents was responsible for maintaining the safety of the sewerage tank at issue, in the present petition it is abundantly clear from the terms of the Agreement that Sulabh is solely responsible for the maintenance and supervision of the toilet complex in Block F-7, owned by the Corporation, as concluded above. Accordingly, Sulabh is directed to pay the entire sum of Rs.5,13,801/- (with simple interest @ 6% per annum w.e.f. 19.3.2005 i.e., the date of this petition till payment) to the petitioners. This, of course, does not foreclose any claim that Sulabh may have against the Corporation in view of their relationship under contract in respect of the payment they are required to make by virtue of this judgment. Sulabh and the Corporation may have their inter se rights and liabilities sorted out elsewhere in accordance with law. But, with that the petitioners have no concern.

36. With the aforesaid directions the writ petition is allowed. There shall be no order as to costs.

BADAR DURREZ AHMED
(JUDGE)

July 03, 2007
MH/M